IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

Bail Appl..No. 6791 of 2007()

CC.276/1996 of C.J.M.PALAKKAD

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PETITIONERS :

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1. A. ANWAR HUSSAIN,
KAITHAVARAM BUNGLOW,
KANKATHUMUKKU,
KOLLAM-12.

2. BEENA RAVI,
W/O ANWAR HUSSAIN,
KAITHAVARAM BUNGLOW,
KANKATHUMUKKU,
KOLLAM-12.

BY ADV. SRI.P.SIVARAJ

RESPONDENTS:

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1. SUB INSPECTOR OF POLICE,
TOWN SOUTH POLICE STATION,
PALAKKAD.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 6791 OF 2007

Dated this the 7th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. They face indictment in a prosecution for offences punishable, inter alia, under Sec.406 of the IPC. The crime was registered on the basis of a private complaint. Investigation is now complete. Final report has been filed. Cognizance has been taken by the learned Chief Judicial Magistrate, Palakkad. The petitioners have not entered appearance so far. Consequent to the non-appearance of the petitioners before the learned C.J.M. warrants of arrest have been issued by the learned C.J.M. against the petitioners. According to the petitioners, they are absolutely innocent. Their earlier absence was not wilful or deliberate. This Court in Crl.M.C.No.5296/03 had granted interim stay. That Crl.M.C.

has now been dismissed. The petitioners are now willing to appear before the learned Magistrate and seek regular bail. The petitioners apprehend that their applications for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is, in these circumstances, prayed that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

2. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioners' applications for regular bail on merits, in accordance with law and expeditiously. No special or specific directions appear to

be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this application is dismissed; but with the observation that if the petitioners surrender before the learned Chief Judicial Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Chief Judicial Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge